served basis, *unless other contractual arrangements are made.*

It should be obvious that joint-use agreements need to better specify how much space and how much overturning moment each utility will reserve for their use on the poles. Even more important for the future may be additional agreements for pole-owning utilities to install specified spare space on new poles for future use by agreeing utilities (to limit the need for future pole changes).

In the past, when there was typically only one utility of a type on a joint-use pole, and easily differentiable types of facilities for each type of utility, it was easy for workers to know what belonged to whom. There are already too many instances where customers have been hooked up to the wrong supply secondary or wrong CATV cable, not to count the instances of cable damage where the mistake was found only after cutting into the cable. There have even been instances of CATV workers cutting into power cables by mistake.

With multiple utilities and multiple uses of similar looking cables, it is becoming imperative that cable ownership be marked at each structure. It should also be obvious that many utilities need to better train their personnel on identifying their own facilities.

Conclusions

1. Joint-use power and communication lines, where practical, can be safe, reliable, and economical—if (a) *all* of the utilities plan and execute their additions in accordance with good practice for the local conditions, (b) *all* of the utilities use appropriate work rules, procedures, and equipment, and (c) all of the *owning* utilities adequately reimburse the pole owner(s).

2. Neither electric utilities nor communication utilities who use supply space work rules to install and maintain cables in the supply space should be penalized by simplified allocation formulas.

3. The cost of the *worker safety zone* should be entirely borne by those communication utilities that choose not to use the supply space work methods and, therefore, require the creation of the *worker safety zone* to set off a *separate communication space* from the *supply space*.

4. As a practical matter, the worker safety zone consists of four or more feet between attachment points, in order to allow room for jumpers and brackets to meet required clearances at the pole. The worker safety zone at the pole is larger on long spans to allow required working room at midspan.

5. Pole *length* is predicated upon (a) the highest and lowest bolt holes for attaching brackets and insulators to support cables and conductors and (b) terrain.

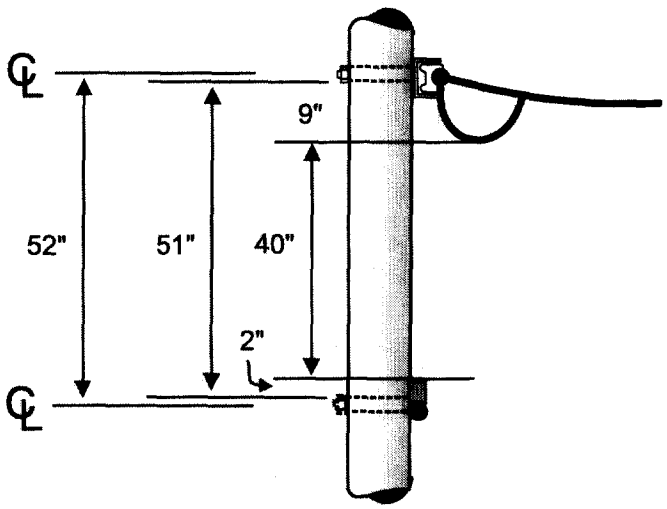
6. Any overly simplified formula that allocates the top 5 inches of the pole to electric utilities should, in like kind, allocate the 3 feet below the lowest communication attachment to communication utilities for attaching local service boxes, amplifiers, and the like.

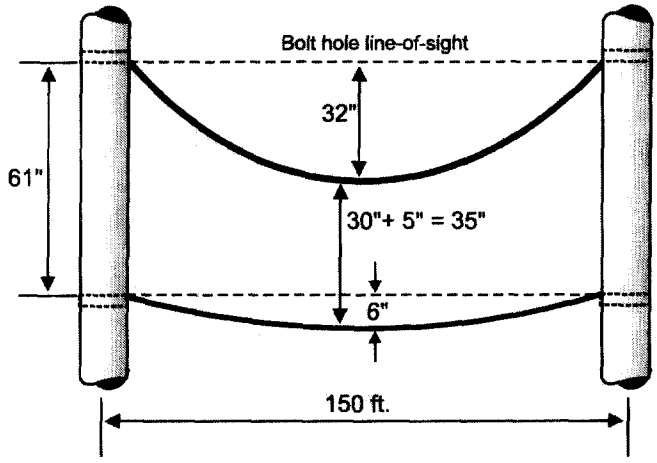
7. Allocation formulas cannot use a minimum height of communication attachment and an average pole height to define the usable space, without discriminating against the electric utility. Statistical sampling should be used to determine the appropriate number to use for such allocations.

Code Quiz Solution

The basic clearance between bolt holes at the pole for both spans is the 40 in (NESC clearance) + 9 in (supply jumper) + 2 in (ADSS bracket) = 51 in clearance, or 52 in spacing.

To assure appropriate midspan clearances, the 150-ft span needs 30 in (NESC clearance) + 32 in (triplex sag) + 5 in (sag error/pole movement allowance) – 6 in (minimum ADSS sag) = 61 in. The 200-ft span needs 30 + 50 + 6 – 8 = 78 in. Midspan clearances control.





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PUBLIC UTILITIES REPORTS - FOURTH SERIES

MAINE

Re Proposed Amendment to Chapter 88, Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure (Chapter 880)

Docket No. 93-087

Maine Public Utilities Commission

SLIP OPINION

May 13, 1993

SYNOPSIS:

Before Commissioners: PAINE and NUGENT, Commissioners, Charles A. Jacobs Administrative Director Docket No. 93-087 **May 13, 1993** NOTICE OF RULEMAKING PUBLIC UTILITIES COMMISSION Re: Proposed Amendment to Chapter **88**, Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure (Chapter 880) BY THE COMMISSION: I. SCHEDULE

The schedule for this rulemaking is as follows:

June 3, 1993 9:00 a.m. Hearing, Public Utilities Commission, Horace S. Libby Hearing Room, 242 State Street, Augusta, Maine

June 14, 1993 Comment deadline

June 30, 1993 (or earlier) Decision TABLE OF CONTENTS eck [TO BE SHOT MS. P. 1] [TO BE SHOT MS. P. 2] [TO BE SHOT MS. P. 3]eckend II. INTRODUCTION

By this Notice, we are initiating a rulemaking for the purpose of amending Chapter **88** of the Public Utilities Commission Rules. As amended, Chapter **88** will become Chapter 880 (attached hereto as Appendix A). Present Chapter **88** provides only for the procedure to be used if a complaint is filed pursuant to 35-A M.R.S.A. § 711 for resolving disputes over rates, terms and conditions among entities attaching to joint-use utility poles. Under the proposal, the substantive scope of Chapter 880 will be greatly expanded, primarily in response to 1992 legislation requiring the Commission to "adopt a rule governing the resolution of pole attachment rate disputes" and to "consider various formulas . . .." See 35-A M.R.S.A. § 711(4), enacted by 1991 Laws, c. 708, § 1. We interpret this directive as requiring the public Utilities Commission to adopt a rule which establishes a reasonable allocation of the costs of joint-use utility poles among electric utilities, telephone utilities and cable television systems which may attach conductors, circuitry and other equipment to these poles.

35-A M.R.S.A. § 711 states that if two public utilities, or a public utility and a cable television system, cannot agree to allow the joint use of utility poles, or cannot agree upon reasonable terms and conditions or compensation, the Commission shall decide these issues upon the filing of a complaint. Whether attachments will be permitted has not been a significant issue in Maine, but the issue of compensation has been significant. Consistent with the directive of new subsection 4 of section 711, the proposed rule addresses primarily the issue of compensation, or joint cost "responsibility."

In this proceeding we are guided statutorily by the principle that Any actions taken or orders issued by the commission under this section shall take into account the interests of the subscribers of the affected cable television system, as well as the customers of the affected public utility.

New subsection 4 specifically directs the Commission to consider "various formulas, including, but not limited to, the formula adopted by the Federal Communications Commission (FCC) . . ."

In the proposed rule, we have considered the interests of the customers of all three entities which use joint-use poles. The cost benefit of a single pole, rather than three separate poles, is substantial. For reasons explained below, we find that the characteristics of a utility pole which make it capable of joint use (e.g., the supporting portion of the pole that provides enough height to allow all three entities to attach) is one which benefits all three attachers equally. We are generally familiar with the rates that cable television companies presently pay to utilities for pole attachments, and we believe that the interests of electric and telephone customers are not adequately protected. We have considered the FCC and certain other allocation formulas. We believe that the FCC formula and at least one other formula we have considered would continue the present unreasonable level of support for cable television companies or cable television subscribers by electric and telephone ratepayers. In addition, the possibility of local telephone service and cable television service competition between telephone companies and cable companies suggests comparable financial support from each of those industries.

We also recognize, however, that the allocation formula contained in the proposed Rule may result in substantial increases to the pole attachment rates that cable television companies must pay. However, under this rule, and under utility ratemaking principles generally, additional revenues received by utilities from cable companies for the use of utility poles will result in a lower cost burden for electric and telephone utility ratepayers. As a result, electric and telephone rates will be lower than they otherwise would be. We have specifically considered the interests of cable television subscribers in proposed section 8, which would limit the amount of increase per pole that could be imposed in a year. Section 8 also would require a further cap on per-customer annual increases which would apply in areas with high per-customer pole attachment costs, typically rural low-density areas. III. DISCUSSION OF PROPOSED RULE SECTION 1. DEFINITIONS

The definitions contained in Section 1 are for terms which are commonly used in the proposed rule. SECTION 2. APPLICABILITY

Section 2 states that the pole attachment rate setting principles and formula contained in the proposed rule are applicable in proceedings brought

under 35-A M.R.S.A. § 711. It also refers to other adjudicatory proceedings within the Commission's jurisdiction. The policies and formula could, of course, be applied in an electric or telephone utility rate proceeding in order to determine the reasonableness of utility pole cost burdens and of revenues received for joint-use poles from other utilities or from cable television systems. SECTION 3. DETERMINATION OF TOTAL COST OF SERVICE FOR JOINT-USE UTILITY POLES

Section 3 states that the total cost of service (or revenue requirement) for joint-use utility poles will be established in the same manner as the overall revenue requirement for a public utility in a rate proceeding before the Commission. The cost of service for poles must be determined prior to applying a formula (in section 4) which will determine how total costs will be allocated among attachers. Section 3 describes the investments and expenses which shall and shall not be included, as well as other revenues which should be taken into account. A few provisions require some comment. A. Section 3 (D) (1) (d)

Traditionally, cable television systems have paid separately for "make-ready" work (primarily, the moving of telephone company circuitry in order to make space for a CATV attachment). Make-ready work can be considered an expense which is necessary for all attachers to gain access to the cost savings of a joint-use pole. Therefore, under the proposed rule, this expense would be included in the total cost of service and would be subject to the allocation of Section 4 below. We are aware of complaints in the past about delays in performing make-ready work. Under the existing system, cable companies may have an incentive to request make-ready work on an inefficient piecemeal basis, e.g., one or two poles at a time. On the other hand, the proposal might create an incentive to request unnecessary make-ready work. We request comments on the proposal and on any alternatives which might provide incentives to avoid the problems described above. B. Sections 3 (D) (1) (e) and 2 (b)

Taken together, these two provisions stand for the policy that administrative costs (including directly assigned costs and overhead) for joint use poles are not necessarily identical to those reasonably attributable to the provision of electric and telephone service to retail customers. These provisions do not propose any significant level of detail as to the direct or overhead expenses which should or should not be included. Parties may make suggestions for greater detail in their comments. We expect that this issue will be addressed more completely in any litigation that occurs under this rule. C. Section 3 (E)

A utility's book of accounts may not be sufficiently detailed to separate out joint-use poles from total poles, cross arms (or certain other attachments) from poles, or various other investments or expenses. Nevertheless, there are various ways in which certain investments or expenses may be calculated from larger of mixed accounts, using sampling and ratios. For example, the investment in cross-arms might be excluded by calculating a ratio from the current costs of new cross arms and new poles (as required by subsection 2 of Section 3) which would be applied to an account containing both investments. D. Section 3(G)

This provision allows a utility to establish separate revenue requirements for poles of different lengths. Some information we have seen (i.e., prefiled testimony in the TAM-CMP case) indicates that the material costs for taller poles are greater per foot than the material costs for shorter poles. On the

other hand, capitalized labor costs for installing poles may have an inverse relationship to length. In an exhibit provided by CMP at the prehearing in the current case between the cable companies and CMP (Docket No. 93-030), it appears that CMP has separated its investments for different-length poles.

The provision allowing separation by length is optional; it is not designed to require a pole owner to undertake an expensive study, but does allow the use of existing information. The precision that is permitted by this rule must be balanced against the cost and the possible complexity of litigation. Before parties pursue the avenue of separating investments by pole length, they should make at least some preliminary determination that it will make much difference in the end. Section 5(C) states that there shall not be separate rates for different-length poles if no attacher is faced with a highest pole-length-specific rate that is not more than 10% greater than the lowest rate. The fact that expenses (aside from depreciation) are similar for poles of different lengths, as well as the allocation process (see section 4 (C) (5)), may reduce the effect of any great variations in investment among different pole lengths. SECTION 4. ALLOCATION AMONG JOINT USERS OF JOINT-USE UTILITY COSTS

This section determines how the costs established under section 4 will be allocated among the joint users.

We start from the premise that joint-use poles are less costly for each attacher than separate solely-owned poles. While a joint-use pole undoubtedly costs more than any single sole-use pole, because more height is needed, the cost of one joint-use pole is almost certainly less than the total cost of two or three sole-use poles. Utilities, cable television systems and their customers all benefit from the cost savings realized from using joint-use poles. The public further benefits in not having two pole lines (which may be the natural limit) on either side of every road.

New subsection 4 of 35-A M.R.S.A. § 711 requires us to "consider various formulas, including, but not limited to the formula adopted by the FCC . . .." We have considered five possible ways of allocating joint-use pole costs. Three of these assume that costs should be allocated in proportion to the amount of space used on a pole. For reasons explained below, we adopt this general approach. The formula which we propose assigns the amount of space used by each attachment directly to the attacher, and divides the remaining common costs equally among the number of users. We will discuss that approach first. A. The Proposed Formula . Assignment of attachable space

All of the attachers attach "wires" to joint-use utility poles. In the case of electric utilities, the proposed rule refers to these as "conductors." In the case of telephone utilities and cable television systems, the proposed Rule refers to wires or cable as "circuitry." The National Electric Safety Code requires electric conductors to be placed on the top portion of the pole and for communications circuitry to be placed below a 40 inch space known as the "neutral zone" which must separate electric and communications attachments. (The neutral zone will be discussed in detail in the section below addressing common space.) All circuitry or conductors must be at a certain height above the ground, usually 18 feet. Poles therefore must be tall enough to allow the required clearance as well as the space for direct attachments.

In order to discuss this attached space and the cost assignment of

attachments, we use the term "attachable space." We believe this is a far more accurate characterization than the misleading term "usable space," which has often been used to describe the same space, including by Congress and the FCC. The neutral zone and the portion of a pole below the lowest attachment may not be "attachable," but they are clearly both "usable" and actually used in common by the joint users. They are used to support and to permit the very existence of those portions of the pole on which attachments may be made. That these common areas of the pole are both "used and useful" is established by the fact that the Commission allows them to be included in utilities' rate bases.

For the attachable space, we have assumed that costs incurred are proportional to the amount of space used by each attacher for its conductors and circuits. It is, or course, arguable that the costs incurred are driven by other causes and are not linearly related to footage. For example, because poles are available in five-foot increments, the presence on any particular pole of an additional attachment may cause more costs than are represented by the space used by the new attacher's attachments. See discussion of marginal-cost pricing below in Part D under this Section. Nevertheless, we suspect that the phenomenon described above is averaged out over all poles and all users, and we believe that the footage used for conductor and circuit attachments is a reasonable representation of the costs incurred. Certainly there is a relationship between the number of feet used and material costs, even if the per-foot cost increases for longer poles. On the other hand, per-foot installation costs (which are capitalized) probably decrease with taller poles. Many operating and maintenance costs probably do not vary with the amount of space used, but tree trimming costs may be related, as well as the costs of maintenance vehicles. Accordingly, we will assign costs for circuit and conductor attachments on the basis of space actually used. a. Electric Space

Proposed Section 5(B) allows parties to adopt the "standard" direct assignments of the attachable space that are stated in the rule. It also allows parties, based on actual measurements of reasonable samples, to prove that other amounts should be accepted instead.

Electric utility attachments use approximately the top four feet of a joint-use pole. The National Electric Safety Code generally requires a space of 40 inches between the primary (energized or hot) conductor, which is placed near the top of the pole, and the neutral (grounded) conductor. According to testimony prefiled by CMP in Telephone Association of Maine v. Central Maine Power Company, Docket No. 82-054, holes which must be drilled for a attaching cross-arm must be at least 5 inches below the top of the pole. The proposed rule would assign four feet to electric utilities for their attachments of conductors. Central Maine Power Company proposed four feet in the testimony described above; four feet was assigned in the Stipulation in the TAM-CMP case. (In addition, other proposed assignments in this rule are in four inch increments.) b. Communications

It is a little more difficult to determine the amount of communications space, particularly the amount of space for telephone utilities. It is essentially the amount of the pole that is "left over," after deduction of all other amounts: the electric utility attached space, the neutral zone and the amount needed for the necessary ground clearance. Where the clearance required is the typical minimum of eighteen feet (at some point between two poles), the height of the lowest attachment on the pole must be about twenty feet. n1 Data

presented by NET in New England Telephone Company, Re: Request for Commission Adjudication of Dispute with Cable Antenna Television Companies Concerning Annual pole Attachment Rates Filed Pursuant to 35-A M.R.S.A. §§ 8302, 711 and 1302 and Chapter 88 of the Commission's Rules, Docket No. 89-071, (hereinafter, the NET-Cable Companies case) showed that NET's average pole height was 37 feet. Data supplied more recently by Central Maine Power Company indicates that its average pole height is also 37 feet. NET claimed that the usual amount of a pole below ground level is six feet. The parties in the TAM-CMP case stipulated that the below ground amount was six feet. Using these numbers, three and two-thirds feet (44 inches) is available for communications (telephone company and CATV) attachments.

** See Table in Original. **

The Rule proposes to assign cable television systems one foot of the three and two-thirds feet of communications space. Cable television attachments are normally placed at the top of the communications space. In the 1989 case, new England Telephone Company claimed that its construction manual requires a space of one foot between each communication cable or wire. This space is required in part to provide clearance for CATV amplifiers and expansion loops. The need for sufficient work space and the fact that different weight cables may have different amounts of sag between poles also suggests a spacing of about one foot. The Federal Communications Commission's Rule assigns one foot directly to cable companies, presumably based on the above considerations.

On the "standard" 37-foot pole that the proposed Rule allows to be used for purpose of the "standard" assignments and allocations, telephone utilities would be assigned all of the communications space (three and two-thirds feet, or 44 inches) on poles which have no cable television system attachment. On joint-use poles with CATV attachments, telephone companies would be assigned two and two-thirds feet (32 inches).

We recognize that this "left-over" approach to the telephone utility assignment is conceptually different from the approach we have proposed for assigned space for electric utilities and cable television systems. If, for example, in an adjudicatory proceeding, a party showed that average pole height was 36 feet (rather than the "standard" 37 feet proposed in the Rule) the "left-over" telephone space would be 1 2/3 feet rather than 2 2/3 feet. We encourage comments which propose alternative approaches to establishing an amount for attachable or attached space for telephone utilities. In establishing a "standard" amount for telephone utilities, we will also consider data (e.g., based on representative samples) which commenters or witnesses may provide in comments or at the hearing and which establish actual average amounts of telephone utility circuitry attachments. c. "Standard" v. Measured Attachable Space

It may be objected that there are no 37-foot (or 36- or 38-foot) poles. We are aware that poles come in five-foot increments. New England Telephone Company, Central Maine Power Company and Bangor Hydro-Electric Company show a number of 35-foot poles, somewhat fewer 40-foot poles and even fewer 45-foot poles.

It might be assumed that the amounts of attached space for electric and

telephone utilities (but not for cable television companies) would vary widely on poles of different lengths. The need for greater amounts of attachable space may be a major reason why taller poles are placed. On the other hand, taller poles are also placed to provide higher clearances or to provide longer spans. In these latter two instances, the attachable space may be similar to that on shorter poles. In the NET-Cable Companies case, Docket No. 89-071, the Staff performed a hypothetical study, using different length poles and substantially different assumed attached spaces on the different length poles. The study showed that even with the great variances, overall allocations did not change very much from one pole size to another. The majority of space on poles is common. Under the Staff's and our present proposal, this space is divided equally. Equal allocation of common space is likely to even out any large variations in assumed attached space. n2

The proposed Rule does allow parties to establish that the amounts of actual attached space are different from the assumed amounts which may be used under the proposed Rule. Under Section 4 (B) (4), parties may make this showing on an average basis (for poles of all heights) or under Section 4 (B) (5), for various separate heights. This latter information may be used in developing separate rates for poles of separate heights. See Section 5 (C) and the discussion of Section 5 below. 2. Common Space, Including Neutral Zone; Equal Sharing a. In General

The common space on a joint-use pole has two components: 1) the portion of the pole that is below the lowest attachment; 2) the neutral zone, which is the safety space between electric and communications attachments.

The chief characteristic of the "common spaces" is that all attachers use and benefit from them in common, even though attachments of conductors and circuits cannot be made in these areas. They are clearly useful and used by all attaching entities. (It is for that reason, as discussed above, that we consider the Congressional/FCC term "usable space," as applied to the area which we have called the "attachable space," to be misleading.) The common space below the lowest attachment (on the standard pole described in the Rule) is approximately six feet below ground and twenty feet above ground, for a total of twenty-six feet. This portion of the pole provides the absolutely essential support for all of the attachers; each attacher needs all of it. Without this twenty-six feet, the higher, attachable areas of the pole simply could not exist. In the absence of other attachers, each attacher would still need all of the twenty-six feet (or slightly less if a smaller sole-use pole required less depth in the ground) and would have to pay for all of its costs. Fortunately, poles can be built which will accommodate more than one attacher, and costs which would otherwise be borne by a single user can become a common cost and shared among the users.

The neutral zone has a similar function. It is a space of three and one-third feet (40 inches) required by the National Electric Safety Code for a safety purpose. Primarily, it protects communications workers so that they need not be in close proximity to dangerous electric conductors. The neutral zone is an essential characteristic of any joint-use pole with an electric attachment. The cost advantages of a joint-use pole cannot be gained without the neutral zone, and each attacher needs the whole of it.

We believe it is evident that both of these common areas should be shared equally. Each attacher individually has an equal need for the space used in

common (26 feet more or less) below the lowest attachment; it would be necessary to incur the cost of that support even without the presence of other attachers. All attachers also individually and equally need to incur the costs of providing all of the neutral zone in order to gain the advantages of a joint-use pole.

In addition, we are well aware of the possibility nationally that cable systems may be allowed to provide local telephone service and that local telephone companies may be allowed to provide cable television service. Whether these forms of competition will actually occur and their timing are both unclear at this time. The possibility, however, provides another reason in support of the approximately equal allocation of costs between telephone companies and cable systems that the proposed Rule would require.

Finally, it is significant that the costs of supplying these common areas are fixed. Fixed costs do not vary with the amount of usage. The costs exist even if there is no usage and do not increase with an increase in usage. These characteristics suggest that fixed costs should not be allocated in proportion to the amount of use of some other facility or service, e.g., in this case, proportionally to the amount of space used in the attachable areas of the pole. We will discuss our objection to this kind of allocation in more detail in the course of our discussion below of the TAM-CMP and FCC allocation formulas. b. Electric Attachments in the Neutral Zone

The cable television companies may argue that the neutral space should be assigned to electric utilities because they may use some or all of the space for non-conductor attachments, specifically, portions of transformers and street lighting brackets. The National Electric Safety Code allows transformers to extend 10 inches into the neutral zone if the "transformer is effectively grounded as uniform practice over well defined areas." Certainly, we recognize that there are arguments that electric utilities should be assigned at least some of this space because on occasion they use it. Some transformers do indeed appear to be partially placed below the neutral conductor and therefore within the neutral zone. Placement of street light brackets in the neutral zone is quite common on those poles that contain street lights. Moreover, electric utilities receive revenues from street lighting customers.

Subject to argument in comments or at the hearing, we nevertheless do not believe that these uses of the neutral zone should be taken into account. The neutral zone must exist whether or not any usage occurs. The reason that the costs for the neutral zone are incurred is the desire by all attachers to gain the cost advantages of a joint-use pole. The neutral zone is not incurred because of a need for space for transformers or street lighting brackets, as street lighting fixtures may be placed between the hot and neutral conductors.

It may be argued that the neutral zone should be allocated or assigned on the basis of benefits received rather that on the basis of the reason for its existence and cost. Even from that perspective, the chief benefit is the ability of all attachers to gain access to the cost savings of joint-use pole. Further, it could be argued that any remaining benefits are evenly divided. The electric utility may gain the advantage of using some neutral zones for transformers and street lighting fixtures, and, in the latter case, additional revenue. n3 On the other hand, the telephone utilities and cable television systems receive a much greater direct safety benefit from the neutral zone. Communications employees work at a greater (and safer) distance from the electric conductors because of

the neutral zone. Electric utility employees must work in the area of the electric conductors and would have to do so whether or not there was a neutral zone. The neutral zone, therefore, furnishes little additional direct benefit to electric utility employees.

We believe that these benefits roughly balance each other, are difficult to quantify in any event, and are unrelated to the reason that the cost of providing the neutral zone is incurred in the first place. We therefore do not propose that they be taken into account in allocating the neutral zone. The primary benefit of the neutral zone remains the ability of various attachers to gain access to the cost savings of a joint-use pole. nevertheless, we invite comments concerning whether we should assign some portion of the neutral zone to electric utilities on those poles that contain street lighting brackets or transformers. Even on these poles, however, we would continue to allocate a substantial portion of the costs of the neutral zone to the joint-use benefit itself. C. Precedent

We have used a formula which is conceptually identical to the one we have proposed here, albeit in a horizontal plane rather than vertical, for the allocation of costs of water main extensions to the customers served by the extension. Under Chapter 65, § 1 (B), a customer's contribution to the main extension is equal to the customer's "share" of the length of the extension: The customer's share shall be (1) the length of the main extension, if any, which serves that customer exclusively plus (2) for each segment of extension serving two or more customers, the length of that segment divided by the number of customers served by it. n4

We are also aware that the Delaware Public Service Commission in 1989 adopted a regulation which includes as its upper limit allocation a formula that is essentially identical to the formula proposed here. See Re: Regulations Governing the Filing of Tariffs by Public Utilities for Rates, Terms and Conditions of Pole Attachments, 108 PUR 4th 275. n5 B. The TAM-CMP and the Congressional/FCC Formulas 1. Allocation of Common Space

We discuss these two formulas together because they share a single important characteristic, one which we believe is logically flawed. As under our proposed formula, both the TAM-CMP and Congressional/FCC formulas assign attachable space in proportion to the space actually used for attachments. However, they both also allocate the common space in the same way rather than equally as we have proposed.

By way of background, the TAM-CMP formula is the formula that the parties stipulated in Telephone Association of Maine v. Central Maine Power Company, Docket No. 82-054. Under that stipulation, which did not address rates for cable television companies, Central Maine Power Company was assigned four feet of the attachable space, and the telephone companies were assigned two and two-thirds feet.

These two assignments resulted in a 60%-40% ratio. This ratio then was applied to the entire remainder of the pole, including the common space below the lowest communication attachment, the neutral zone and the one foot of space assigned to cable television. (CATV revenues were divided in the same proportion, effectively treating CATV space as common space.) The entire pole was therefore allocated in the same ratio (60-40) as the attached portion.

The so-called FCC formula is at least in part a misnomer. The formula was actually established by Congress in 47 USC § 224 (d) (1) ; Congress requires cable television rates to fall within a range of allocation methods, the low end of which is "not less than the additional costs of providing pole attachments" (i.e., incremental costs). The high end is: . . . an amount determined by multiplying the percentage of the total usable space . . . which is occupied by the pole attachment by the sum of the operating expense and actual capital costs of the utility attributable to the entire pole . . . .

The FCC simply restated this range in its Rule, 47 CFR § 1.1409 (c). Like the TAM-CMP formula, the upper end of the range set by Congress assumes that the allocation of the common space should be directly proportional to the percentage assignment of the attachable ("usable") space.

Both of these methods suffer from the same logical fallacy by their failures to recognize that the costs to provide the commons space are fixed, are not "usage"-sensitive and that each attacher needs the whole of the common space. Both methods incorrectly assume that each attacher needs or uses the common areas of the pole (the neutral zone and the space below the lowest attachment) in the same proportion as their attachments use the attachable space. Safety requirements cause the costs of the common areas and these costs are fixed. The amount of costs is not caused by and is not related in any way to the amount of use of the attachable portions of the pole.

We recognize that it is fairly common to allocate the costs of some jointly-used facilities proportionally to the use of some other facility of service that is assigned directly. Often this approach makes a great deal of sense, but only where the cost of the total capacity that the jointly-used facility must provide is dependent upon or sensitive to usage. For example, large portions of telephone company switching equipment are considered usage-sensitive ("traffic-sensitive" in normal industry and regulatory terminology). The amount of switching capacity that is required is directly dependent on the total amount the switch is used. Switching is therefore allocated by the FCC among various services on the basis of usage. By contrast, telephone loop plant (some of which are the same poles at issue in this case) is considered to have fixed costs and is characterized as non-traffic-sensitive. These loop costs are allocated between the interstate and intrastate jurisdictions by the FCC not on the basis of usage but by a fixed allocation.

We do not believe that allocating fixed costs such as the common spaces on joint-use poles in the same proportion as use of some other facility (or a different portion of the same facility, e.g., the attachable space) is logically sound. We have seen no reasoned argument that attempts to justify this approach.

2. Additional Problems with the Congressional/FCC Method

In one respect, the FCC elaborated on the formula handed to it by Congress. Congress stated that "usable space" meant "the space on a utility pole above the minimum grade level which can be used for the attachment of wires, cables and associated equipment." 47 USC § 224 (d) (2). The FCC simply repeated that definition. 47 C.F.R. § 1.402(c). However, the FCC also decided that the "average amount of usable space per pole used for pole attachments" would be 13.5 feet "in lieu of actual measurement or rebuttal. 47 C.F.R. § 1.1404 (g) (11). n6 In the Matter of Adoption of Rules for the Regulation of Cable Television Pole Attachments, CC Docket No. 78-144, Memorandum Opinion and Second

Report and Order (May 23, 1979) PP22-24.

It is in this respect that the FCC formula differs significantly from the TAM-CMP formula. Neither the TAM-CMP formula nor the formula that we have proposed consider the neutral zone to be attachable space. In making its decision, the FCC relied in part on the fact that the neutral zone can be and is used for portions of transformers and for street lighting brackets. However, "usable" (attachable) space serves as the denominator of the fraction which determines the amount of common space and total pole costs that will be allocated to cable television companies. By expanding the denominator of the fraction to include the neutral zone (and leaving the numerator at 1 foot), the FCC drastically reduced the proportion of space and costs allocated to the cable companies to well below the amount that would be allocated under the TAM-CMP formula. Under the FCC formula, cable companies pay for only 1/13.5, or 7.4%, of pole costs. n7

We believe that inclusion of the entire neutral zone on all poles within the definition of attachable space is unreasonable. For the reasons explained above, the reason that the costs of the neutral space are incurred in the first place is that they are necessary in order to have a joint-use pole. These costs should be shared equally among the attachers using and gaining the benefits of the joint-use pole. As our discussion in Part A above makes clear, at best (from the point of view of the telephone companies and the cable companies) we would consider an argument that some portion of the neutral zone, on those poles where electric utilities actually have attachments, should be assigned to electric utilities.

For the reasons explained above, we will not adopt either the TAM-CMP or the Congressional/FCC formulas. C. Stand-Alone Formulas

A stand-alone-cost formula assumes that each entity attaching to a joint-use pole might, as an alternative, construct its own sole-use pole. The cost of building the sole-use pole would be that attacher's "stand-alone" cost. The stand-alone approach begins with the assumption that each attacher separately would need the portions of the pole which on a joint-use pole would be common areas. This underlying assumption is far more logical than the assumption, under the TAM-CMP formula or the Congressional/FCC formula, that the common spaces of the pole, used jointly by all three attachers, are used in direct proportion to each user's attached space. An allocation based on the costs for stand-alone costs, each of which include similar non-attachable support space, might be quite similar to the method we have proposed.

There are various possible rational allocation methods after calculation of individual attachers' hypothetical stand-alone costs. For example, total pole costs might be allocated in direct proportion to each attacher's assumed stand-alone costs. Stated somewhat differently, but producing the same result, the total savings resulting from the use of a joint-use pole would be shared in proportion to each user's stand-alone costs.

The major difficulty we have with using a stand-alone approach is that it would be necessary to conduct a cost study to determine the hypothetical cost of three hypothetical sole-use poles. In a world where few sole-use poles are built (particularly for cable television), cost studies are speculative. Like any other kind of pole, each pole's actual construction and operating costs are

likely to vary considerably depending on location, surface conditions, underground conditions and season. It therefore may be quite difficult to determine an average cost for hypothetical sole-use poles. n8 We therefore will not adopt a formula which uses a stand-alone-cost approach. n9 D. Marginal Cost Pricing

The cable television companies might argue that they should be charged only the marginal cost of their attachment to poles. Undoubtedly, the short run marginal cost of attaching to existing poles which have adequate capacity is quite low. In some cases, the telephone company occupying the pole must do some "make-ready" work, that is, move some of its wires to make room for an additional attachment.

Short-run marginal costs on the particular poles described are not the entire picture, however. Utility pole costs, because of the long lives of the equipment, are inherently long-run in nature, and we would not consider any marginal cost pricing system for pole attachments which did not include long-run marginal costs.

In attachment situations other than the one described above, whether a cable company or any other attacher, there may be substantially different short and long-run marginal costs. For example, if any existing pole does not have sufficient capacity and must be replaced, both the short-run and long-run marginal costs are equal to the cost of installing a new, taller pole. It is also possible that in some cases utilities currently install poles taller than they used to or than they might otherwise, e.g., 40 feet rather than 35 feet, in expectation that the poles will be used for all three attachments. If so, the extra cost necessary to install the extra height should be considered a long-run marginal cost. However, it is by no means clear in general or in particular cases which attacher should be considered the one which has caused the incremental cost of providing additional space. On a pole built in anticipation of all three attachments, it should make no difference which entity fortuitously attaches last.

An incorrect designation of "marginal user" may result in economic inefficiency, in direct contrast to the usual claims made for marginal cost pricing. For example, an overallocation of total joint-use pole costs to a telephone company (resulting from an inappropriate assumption that another attacher should be charged marginal cost) could cause a telephone company to bury cable, even though the total societal cost would increase if both a buried telephone cable and a joint-use pole line used only by electric utilities and cable television systems were placed. In any event, even if a marginal user could be identified, it is by no means clear that it should escape paying for the costs of those portions of facilities used jointly.

Finally, a long-run marginal cost study would be necessary, but expensive, and possible inconclusive, particularly given the various causes for new poles, for replacement poles and for replacement pole heights. SECTION 5. CALCULATION OF RATES OR RESPONSIBILITY REQUIREMENTS

Once the total cost of service is established pursuant to Section 3 and a joint-user's portion of that cost is established pursuant to the allocation formula of Section 4, the calculation of a rate or responsibility requirement is a simple mathematical exercise of multiplying the two. Subsection B of Section 5

requires separate rates for utility poles with three attachers and for poles with two attachers. (Section 4 requires separate allocations for those two classes of joint-use poles.)

If the proceeding under section 711 has established either net book values for different length poles or if a study has been conducted which has established different assignments of attachable space and overall allocations on different-length poles, or both, paragraph C allows separate rates for poles of different lengths. However, separate rates are permitted only if the spread between the highest and lowest rates for at least one attacher is greater than ten percent. SECTION 6. JOINT RESPONSIBILITY AGREEMENTS

We have introduced the term "joint responsibility" to indicate that it is the cost "responsibility" of a joint user which is actually established pursuant to the provisions and processes of sections 4 and 5. The joint-user's joint responsibility may be satisfied by the payment of rates, by joint ownership, by agreements requiring certain proportions of sole ownership or by any combination of these. The net effect of a joint responsibility agreement must approximate the allocation that is determined under section 4.

An electric utility and a telephone utility are likely to have approximately equal responsibility under the allocation required under section 4. See the two examples set forth under Section 4 (E) (1), based on the "standard" space assignments. The last paragraph of Section 5 therefore states that an agreement assigning fifty percent responsibility each to telephone and electric utilities will satisfy the policies of this Rule. Our understanding of the present agreements between New England Telephone Company and Central Maine Power Company, between New England Telephone Company and Bangor Hydro-Electric Company and between New England Telephone Company and Maine Public Service Company are that they require approximately equal sharing of investments and costs. SECTION 7. RATE AVERAGING FOR CABLE SYSTEMS BY ELECTRIC AND TELEPHONE UTILITIES SERVING THE SAME AREA

This section states the principle that cable television systems shall pay, or shall be responsible for, a composite of the revenue requirements of electric and the telephone utilities with which it shares the same space, regardless of actual ownership of the poles. The telephone utility and the electric utility may have substantially different revenue requirements. A cable company located in one area should not have to pay a much higher rate than another cable company located in a different area that is served by the same two utilities providing service in the first area, simply because the telephone utility owns all of the poles (or a disproportionate amount) in the first area and the electric utility owns all of the poles in the other area. Under the NET-CMP pole agreement, for example, both utilities jointly own poles in a number of areas, but in other areas NET and CMP have sole ownership of poles which are nevertheless jointly used. In the overlapping CMP-NET territory, cable companies presently pay half of the rate of each company for use of jointly-use poles (even if they are solely-owned by only one of the companies) in order to avoid the rate disparity problem described above. Section 7 requires this practice in all areas of the state. SECTION 8. PHASE-IN OF RATES OR RESPONSIBILITY REQUIREMENTS

Based on our experience, including the NET-Cable Companies case, Docket No. 89-071 (which was settled and withdrawn prior to hearing), we recognize that the allocation formula contained herein may result in substantial rate increases for the cable companies. The present rate paid by a cable television company

represents only a small fraction of the total cost of service for utility poles. This low level of support by a cable television company results in an unreasonable support for cable company subscribers (or cable companies) by electric and telephone utility customers. While many electric and telephone customers are also cable subscribers, many are not. Electric and telephone utility customers who are not cable company subscribers are therefore overburdened. However, electric and telephone customers who are also cable TV subscribers may presently receive a net benefit, at least if the existing support from electric and telephone utility customers is passed through to them by the cable companies.

In order to alleviate any rate shock to cable customers, Section 8 requires that substantial rate increases shall be phased in. Subsection A of Section 8 limits an annual increase on a per-pole basis. No increase may exceed $ 8.00 per pole per year (67C per pole per month). Larger annual increases must be phased in over two or more years.

Paragraph B of section 8 is designed to create further protection for rural, low-density areas. In some cable television franchise areas, there may be more pole attachments than cable television customers. Paragraph B is stated on a per-customer basis and provides that no annual per-customer increase shall exceed $ 12.00, or $ 1.00 per month.

We understand that even the rates for the lowest cost cable television service in Maine are in the range of $ 12.00 to $ 16.00 per month, or close to $ 150.00 to $ 200.00 per year. Many cable customers subscribe to higher tiers of service, so that the annual revenue per customer is probably well over $ 200.00. Compared to these revenue levels, the proposed allowed annual increases in pole attachment costs of no more than $ 8.00 per pole, or $ 12.00 per customer, appear to be manageable. SECTION 9. REVENUE-NEUTRAL RATE ADJUSTMENT FOR UTILITIES

The change in allocation and rates required by this Rule, in the event of a proceeding under 35-A M.R.S.A. § 711, is likely to result in a revenue change for electric and telephone utilities. We view these changes as essentially a matter of a rate design change. the Rule determines portions of the utility pole revenue requirement that will be paid by each class of customers, including retail utility customers and pole-attachment customers. We normally implement major rate design changes on a revenue-neutral basis and will require that to be done here. Cable companies may (or may not) pass on increased pole-attachment costs in the form of higher rates to their customers. Under this section, any increase in cable television rates must be offset by reductions to telephone and electric utility rates. However, Section 8 requires that rate increases to attachers be phased-in, so that revenue increases to utilities are likely to be moderate. In order to prevent insignificant rate changes, a utility will be required to change its rates only if the attachment fee revenue change is greater than 0.25% of the utility's annual revenues.

We distinguish the policy proposed in Section 9 from the rule which prohibits "single-issue rate cases." That rule generally prohibits a utility from claiming a higher cost for one aspect of its service, without a comprehensive review of the balance among its other costs and revenues. Proposed Section 9 is limited to revenue changes in order to avoid the single-issue rate case problem, as well as the difficulty of reviewing revenue requirement changes

that may result from changes in pole attachment joint responsibility requirements which take a form other than changes in rates to cable companies.

This section does not apply to changes in revenues (or costs) between electric and telephone utilities. In most parts of the state, these changes are not likely to be very substantial. Moreover, because of the near identity between electric and telephone utility customers, the net effect to a customer of a reciprocal change to electric and telephone rates would be minimal. SECTION 10. RESOLUTION OF DISPUTES ARISING OVER TERMS AND CONDITIONS ESTABLISHED BY THE COMMISSION

Once the Commission has entered an order pursuant to 35-A M.R.S.A. § 711, and has required attachments, established terms and conditions, or set rates, enforcement of its order may be necessary. This provision allows any attacher to seek resolution of a dispute arising under the Commission's order (or a contract entered pursuant to a Commission order) pursuant to the informal process contained in Chapter 110 of the Commission's Rules. SECTION 11. APPLICABILITY OF COMPENSATION ORDER TO PERIODS PRIOR TO ORDER

This Section proposes that a Commission order may apply to all periods during which the amount of compensation between or among joint-users was in dispute. However, the Commission's authority to apply the compensation order under section 711 to time periods prior to the date of the order is not free from doubt. Our proposal does not mean that we have resolved these doubts.

35-A M.R.S.A. § 711 states that the "commission may . . . prescribe reasonable compensation . . . when . . . it finds . . . [t]hat the public utilities or cable television have failed to agree upon . . . compensation for the use."

In general, the Commission does not have the authority to establish "retroactive" rates, i.e., rates which compensate a utility for prior underearnings or which compensate ratepayers for past overearnings, unless such rates are specifically allowed by statute. New England Tel. & Tel. Co. v. Public Utilities Commission, 354 A.2d 753, 764 (Me. 1976) ; New England Tel. & Tel. Co. v. Public Utilities Commission, 362 A.2d 741, 752-58 (Me. 1976). 35-A M.R.S.A. § 711, of course, does not expressly state that the Commission may establish compensation retroactively.

On the other hand, the Commission under section 711 is directed to resolve a dispute, i.e., a "failure to agree." That failure to agree necessarily will have existed prior to the date of the Commission's order. The attachers will have failed to agree not only about future compensation but also about compensation for a period before the order and back to the date when the disagreement arose. There is nothing in the language of the Section 711 which suggests that the Commission should resolve only part of a dispute and not all of it. But for the possibility of "reading in" the general limitation against retroactive ratemaking, section 711 on its face contains no limitation. The power under section 711 is separate and distinct from the Commission's normal authority to establish rates for public utility electric and telephone service. Absent the existence of section 711, the Commission arguably does not have the power to establish rates for attachments to utility poles. See American Cable Television, Inc. v. Arizona Public Service Commission, 693 P.2d 928 (Ariz. App. 1983), Chesapeake and Potomac Telephone Co. v. Maryland/Delaware Cable Television Association, 530 A.2d 734 (Md. 1987) ; Teleprompter Corp. v. Hawkins, 384 So.2d

648 (Fla. 1980).

Nevertheless, a statute conferring "special" jurisdiction should perhaps be construed in a manner consistent with the legislatively-established overall Commission function to insure just and reasonable rates for utility customers. Under normal ratemaking methodology (adjusted test year), any compensation order which requires retroactive payment to a utility would have no benefit for the ratepayers of that utility.

A utility's rates in existence prior to a pole attachment compensation disagreement would normally be designed to recover the utility's then-established share of joint pole costs, even if that share, under the policies of this Rule, may have placed too great a burden on utility ratepayers. Any additional recovery for periods while these rates were in effect (e.g., prior to the Commission's order) would constitute a windfall.

Moreover, only shareholders would realize the windfall because (perhaps ironically) of the prohibition against retroactive ratemaking for regular utility service rates. The next time that the utility's rates are set, the Commission would consider only the prospective revenues anticipated from pole attachers. Any attempt by the Commission to capture the retroactive payment for electric or telephone ratepayers would itself be subject to the prohibition against retroactive utility ratemaking.

A question therefore exists whether the Legislature could have intended section 711 to have retroactive effect in light of the fact that an order having retroactive effect can have no impact on the utility rates that we regulate.

It may also be possible to interpret the statute's silence on this issue as permitting the Commission to exercise discretion as to retroactivity. If, for example, the Commission in a prior rate proceeding had determined that a utility had unreasonably failed to obtain adequate compensation for the use of its poles by other attachers, the Commission might set prospective rates based on an attribution of the missing revenues. In such a case, it then may be reasonable in a section 711 proceeding to require any increase in compensation to be retroactive.

In the present proceeding before the Commission under § 711, Docket No. 93-030, we have requested the parties (the cable companies and CMP) to address the retroactivity issue in their comments in this rulemaking. We have also asked them to address whether, under Maine law, in particular the Administrative Procedure Act, agencies have more general powers to adopt rules that may apply retroactively under certain circumstances.

We invite other commenters to this rulemaking to address these issues as well. SECTION 12. PROCEDURE FOR § 711 PROCEEDINGS

Section 12 sets forth the procedure for proceedings under 35-A M.R.S.A. § 711. Essentially, it is identical to the whole of the existing rule, Chapter 88, except for three substantive changes. First, it applies to disputes (failures to agree) between two utilities as well as to disputes between a utility and a cable television system. Second, it applies to disagreement over permitting attachments themselves, in addition to disagreements over rates and terms and conditions. Third, it requires an express finding by the Commission

that the parties have failed to reach an agreement. This finding appears to be necessary for the Commission to invoke jurisdiction under the statute.

The time limit contained in paragraph D of section 12 is imposed because 47 USC § 224 (b) (3) (B) (ii) states that if a state commission does not decide a case within the period stated in its regulation, which cannot exceed 360 days, jurisdiction over a dispute will revert to the FCC. SECTION 13. WAIVER

This provision is similar to other provisions found in the Commission's rules allowing a waiver, exemption or deviation from a rule.

Dated at Augusta, Maine, this 13th day of May, 1993. CHAPTER 880 - ATTACHMENTS TO JOINT-USE UTILITY POLES; DETERMINATION AND ALLOCATION OF COSTS; PROCEDURE SUMMARY - This Rule establishes the amounts which electric utilities, telephone utilities and cable television systems may include in their cost of service for attachments to joint-use utility poles; the allocation of those costs among joint users; and the procedure for establishing cost responsibility and rates. eck [TO BE SHOT MS. P. i] [TO BE SHOT MS. P. ii] [TO BE SHOT MS. P. iii]eckend CHAPTER 880 . DEFINITIONS A. Attachable Space. "Attachable space" on a utility pole means the space on which electric utilities, telephone utilities and cable television systems may attach conductors or circuitry pursuant to the provisions of the National Electric Safety Code or other reasonable practices of electric and telephone utilities and cable television systems. Attachable space shall not include common space, including the neutral zone. B. Cable Television System. A "cable television system" is defined by 47 U.S.C. § 522(6). C. Common Space. The "common space" of a joint-use utility pole consists of the portion beneath ground level, the portion from ground level to the lowest place on the pole at which a telecommunications circuit may be attached, plus the neutral zone. It is space used by all of the joint users in common. D. Electric Utility. An "electric utility" is defined in 35-A M.R.S.A. § 102(5). E. Joint-Use Utility Pole. A "joint-use utility pole" is a utility pole on which there are circuit or electric conductor attachments by an electric utility, a telephone utility and a cable television system or any two of them. F. Neutral Zone. The "neutral zone" shall be considered part of the common space of a utility pole. The neutral zone is a 40-inch (three and one-third feet) space on which no electric or communications circuitry may be attached as required by the National Electric Safety Code for the purpose of safety. It is located between the areas to which electric conductors and communication circuitry (telephone and cable television) may be attached. G. Responsibility Requirement. The "responsibility requirement" of a joint user is the portion of joint-use pole costs for which the joint user is responsible pursuant to the allocation established under Section 4 and 5 of this Chapter. A joint user's responsibility requirement may be satisfied by sole ownership, joint ownership or the payment of rates as described in Section 5 and 6. H. Telephone Utility. A "telephone utility" is defined in 35-A M.R.S.A. § 102(19). I. Utility Pole. A "utility pole" or a "pole" is a pole in the public way or on private property used to carry conductors and circuitry of electric utilities, telephone utilities, cable television systems or any combination thereof. A utility pole may be owned by an electric utility, by a telephone utility or a cable television system or jointly by any combination thereof. . APPLICABILITY

The provisions of this Rule shall apply to all proceedings under 35-A M.R.S.A. § 711 and to any other adjudicatory proceeding before the Commission in which the cost of attaching to utility poles, the allocation of those costs, rates for attachment, or pole attachment revenues are at issue. . DETERMINATION

OF TOTAL COST OF SERVICE FOR JOINT-USE UTILITY POLES A. Use of Rate Case Practice. The cost of service or revenue requirement for joint-use utility poles owned by an electric utility, a telephone utility or a cable television system shall be determined in the same manner as in a general rate case proceeding for an electric or telephone utility, including the use of a test year. The investments and expenses which shall be included and excluded are described in this section. B. Investments. 1. Included Investments. The following investments shall be included: a. The owner's net investment in joint-use utility poles; b. The owner's net investment in guy wires, poles, and other equipment which support joint-use poles. 2. Excluded Investments. The following investments shall not be included: a. Conductors and circuitry, cross arms, transformers, street lighting fixtures and other attachments or appurtenances used by only one of the joint users; b. Investments in poles, guy wires and other supporting equipment which were provided by customer contributions in aid of construction; c. Any unreasonable or imprudently-incurred investment. C. Cost of Capital. 1. For Utilities. An electric or a telephone utility shall use the cost of capital actually found in or reasonably ascertainable (e.g., from a stipulation) from its last general rate proceeding. If the cost of capital found in the last rate proceeding is no longer accurate, the Commission shall determine the utility's cost of capital in an adjudicatory proceeding under 35 M.R.S.A. § 711 or in another proceeding under the Commission's jurisdiction. On an interim basis, pending the utility's next rate proceeding, the Commission may find a cost of capital using the utility's next rate proceeding, the Commission may find a cost of capital using the utility's actual cost of debt and the cost of equity findings or stipulations in recent general rate proceedings for other comparable utilities, applied to a reasonable capital structure and the known characteristics of the utility in question. 2. For Cable Television Systems. If a cable television system owns any joint-use poles, its cost of capital shall be determined in an adjudicatory proceeding pursuant to 35-A M.R.S.A. § 711 or, if the cable television system agrees, its cost of capital may be set at the average of the telephone and electric utility owning joint-use poles in the cable television system's service territory. 3. Income Tax Adjustment. The cost of equity shall be adjusted to account for the effect of federal and state corporate income taxes. D. Expenses and Revenues.

1. Included Expenses. The following expenses shall be included in a utility's or cable television system's expenses for joint-use poles: a. Depreciation; b. Maintenance, including tree trimming; c. Property taxes; d. Expenses incurred in moving conductors, circuitry or other equipment attached to poles for the purpose of making space available for additional attachers ("make-ready work") ; e. Administrative expenses reasonably attributable to the administration of joint-use poles; f. Billing expenses attributable directly to users of joint-use poles. 2. Excluded Expenses. The following expenses shall be excluded, deducted or adjusted: a. Maintenance or other expense related to sole-use equipment described in paragraph A(2) (a) above; b. Administrative and overhead expenses which are not related to the provision of attachment space on joint-use poles (for example, marketing expense, customer service expense, meter reading and billing expense which should be assignable to the provision of electric and telephone services) ; c. Any unreasonable or imprudently incurred expense.

3. Adjustments. Adjustments shall be made to account for any expense which provides no direct or indirect benefit to one or more users of the pole.

4. Other Revenues. Electric and telephone utilities shall deduct from their pole revenue requirements that portion of amounts received as support charges from customers served by joint-use line extensions which are reasonably attributable to costs for joint-use poles (but not conductor, circuitry and cross-arm costs), as described in this Section.

E. Determination of Amounts. Where the utility's or cable system's books of accounts do not provide the amounts required by this Section, its investments and expenses may be calculated by any method designed to produce a reasonably accurate result, which may include the use of sampling, ratios developed from historic or current equipment costs or expenses, or similar techniques.

F. Carrying Cost; Cost Per Pole The cost of service or revenue requirement established under this Section shall be stated as (1) an annual carrying cost stated as a percentage of net joint-use pole investment and (2) as a total annual cost of service per pole.

G. Option to Establish Separate Costs of Service for Different Pole Lengths. A separate cost of service may be established for joint-use poles of different lengths, e.g., 30, 35, 40 and 45 feet, if information which establishes net book investment values for different lengths is available or can be reasonably ascertained. No distinction shall be made among expenses for different length poles except for depreciation expense. . ALLOCATION AMONG JOINT USERS OF JOINT-USE UTILITY POLE COSTS

A. General Findings and Policy. The Commission recognizes that joint-use utility poles are more cost efficient than separate-use poles and that entities attaching to these poles benefit from those cost savings. It is the policy of this Commission that each attacher to joint-use poles shall pay for the costs of attachable space on joint-use poles in proportion to the vertical space which is necessary for its attachments; and that joint users should pay equally for the common space (including the neutral zone) on joint-use poles because it provides an equal benefit to each user. The Commission finds that the allocations required by this Section, in combination with the mitigating effects of Section 8 and 9 of this Chapter, take into account the interests of the subscribers of cable television systems as well as the customers of electric and telephone utilities.

B. Average Total Pole Length

Unless separate assignments and allocations are to be made for poles of different lengths, telephone and electric utilities shall determine the weighted average (mean) length of joint-use poles in which they have an ownership interest (or which they occupy jointly, regardless of ownership), for each of the following joint-uses: . by an electric utility, a telephone utility, and a cable television system; . by an electric utility and a telephone utility; . by the owning utility and a cable television system;

The averages required by this subsection shall be determined by using actual counts or by use of representative and statistically significant samples and may be calculated using reasonable ratios developed from categories of use, ownership and size. The total lengths of poles shall include those portions which are below ground level.

If a cable television system solely owns any joint-use poles, it shall determine the average lengths in the categories described above for those poles, but shall not determine the quantities or heights of any poles in which a utility has an ownership interest.

In lieu of the calculations described in this subsection, parties may agree to use a standard 37-foot joint-use pole for the assignments and allocations required under this Section. C. Attachable Space: Assignment Proportional to Attached Space.

1. Electric Utility Space. Electric utilities shall be assigned a standard four feet of space, which represents the approximate minimum allowable space between the top of the pole and the neutral conductor, unless a different amount is established as provided in subparagraph C(4) below;

2. Telephone Utility Space. Telephone utilities shall be assigned: a. On poles jointly used by itself and an electric utility, a standard three and two-thirds feet (44 inches) of space, which represents the space between the highest possible communication circuit attachment (immediately below the neutral zone) and the lowest possible communications attachment, unless a different amount is established as provided in subparagraph C(4) below; b. On poles jointly used by an electric utility, a telephone utility and a cable television system, a standard two and two-thirds feet (32 inches) of space, which represents the space available to a telephone utility, after deduction of the amount assigned to a cable television system, unless a different amount is established as provided in subparagraph C(4) below.

3. Cable Television Space. Cable television systems shall be assigned a standard one foot of space unless it is established that a cable television system uses a different amount as provided in subparagraph C(4) below.

4. Evidence of Different Space Assignments. In an adjudicatory proceeding, a party may establish that different (non-standard) amounts of attached space should be assigned, based on measurements of attached space on representative and statistically significant samples of joint-use poles. Separate samples shall be used for (1) poles used by an electric utility, a telephone utility and a cable television system and (2) for poles used by an electric utility, and a telephone utility. Separate samples may be used for other categories of two-user poles (electric-CATV and telephone-CATV).

5. Optional Further Categorization by Pole Length. Within the two joint-use categories described in subsection C(4), subject to Rule 403 of the Maine Rules of Evidence, a party in an adjudicatory proceeding may present evidence that the proportion of attached space for each attaching entity varies substantially with different pole lengths, e.g., 30, 35, 40 and 45 feet, based on separate representative and statistically significant samples of each length. The Commission may determine which parties should bear the cost of any studies conducted to provide the measurements described D. Common Space; Equal Sharing.

1. Calculation of Common Space. Common space (which shall include the neutral zone) shall equal the total average pole length, as determined under subsection B above, minus the attachable space, as determined pursuant to subsection C above, divided by the number of attachers.

2. Common Space on Poles Categorized by Length. If separate assignments have been made for poles of different lengths, then the common space for each length shall be determined by subtracting the assigned space for that length. E. Overall Allocation.

1. General Formula. The cost responsibility for each attaching entity shall equal the sum of the assignment for attachable space for that entity (as determined under subsection C above) plus the allocation of common space (as determined under subsection D(1) and (2)). This amount shall be divided by the average length of joint-use poles, as determined under subsection B(1) above in order to calculate an attacher's percentage responsibility. eck OVERALL ATTACHED + COMMON SPACE ALLOCATION = SPACE NO. OF USERS PERCENTAGE LENGTH OF POLEeckend [TO BE SHOT MS. P. 9]

2. Separate allocations. Separate overall allocations shall be determined for poles with three joint users and for poles with three joint users. Within each of these joint use categories, if separate assignments for attached space have been made for poles of different lengths (pursuant to subsection C(5) above), separate overall allocations shall also be established for each pole length. . CALCULATION OF RATES OR RESPONSIBILITY REQUIREMENTS

A. In General. The rate per-pole or responsibility requirement for each attacher shall equal the total cost of service for a joint-use pole, as established pursuant to Section 3(F) above, multiplied by the overall percentage allocation established pursuant to Section 4 (E) above. The rate shall be per pole. RATE OR RESPONSIBILITY = PER POLE COST OF SERVICE § 3(F) X PERCENT ALLOCATION § 4(E)

B. Separate Rates for Two-User Poles and Three-User Poles. Separate rates or responsibility requirements shall be established for poles with three attachers and for poles with two attachers.

C. Separate Rates for Different Length Poles. Within the two usage categories described in subsection B above, separate rates or responsibility requirements may be established for poles of different lengths, if separate costs of service have been established for different-length poles under Section 3 above, or if different overall allocations for different-length poles have been established pursuant to Section 4 (E) above, or both. If, however, for all joint users, the highest pole-length-specific rate is no more than ten percent greater than the lowest pole-length-specific rate, a composite rate or responsibility requirement shall be established which includes all pole lengths. . JOINT RESPONSIBILITY AGREEMENTS

Joint-users of poles may enter agreements which establish joint responsibility for joint-user poles in their common service territories and which may eliminate or reduce the need for the payment of direct compensation. Joint responsibility may include the joint ownership of poles, sole ownership of poles in an agreed proportion, compensation or any combination thereof, provided that the net effect of the agreement assigns responsibility for joint-use utility pole costs in amounts approximately equal to the allocation determined under Section 4.

Telephone utilities and electric utilities may enter a joint responsibility agreement which is consistent with the allocation policies of this Chapter if

each utility has approximately fifty percent responsibility for the joint-use poles costs which remain after the deduction of the responsibility requirement of cable television systems. . CABLE TELEVISION SYSTEMS RATE OR RESPONSIBILITY REQUIREMENTS TO ELECTRIC AND TELEPHONE UTILITIES SERVING THE SAME AREA

Where a cable television system attaches to poles not owned by itself, but which are jointly-used by an electric utility and a telephone utility, regardless of actual utility ownership interest in the poles, the electric and telephone utilities shall set the rates or responsibility requirements for the cable company based on their own relative joint responsibility requirements, and not on their ownership interest in joint-use poles. The electric utility rate or responsibility requirement established for the cable television system under Section 5 shall be multiplied by the electric utility's relative percentage responsibility requirement in the whole area served jointly by it and the telephone utility. The telephone utility or responsibility requirement rate established for the cable television system under Section 5 shall be multiplied by the telephone utility's relative percentage responsibility requirement for the whole area served jointly by it and the electric utility.

For the purpose of this Section, the "relative joint responsibility requirements" of the electric and telephone utilities means each utility's portion of the total electric and telephone utility responsibility requirement in their joint serving area, exclusive of any cable television system responsibility requirement. The relative joint responsibility requirement of the electric utility and the relative joint responsibility requirement of the telephone utility shall total 100%. EXAMPLE 1. 100% electric utility rate for CATV pole attachment (Section 5) = $ 12/yr. 2. 100% telephone utility rate for CATV pole attachment (Section 5) = $ 10/yr. 3. Electric utility responsibility requirement = 55%. 4. Telephone utility responsibility requirement = 45%. 5. Apportioned electric utility rate (Section 7) = $ 12 x .55 = $ 6.60. 6. Apportioned telephone utility rate (Section 7) = $ 10 x .45 = $ 4.50. 7. Per Pole cost for CATV attachment = Step 5 + Step 6 = $ 11.10. . PHASE-IN OF RATES OR RESPONSIBILITY REQUIREMENTS

A. General Rule. Subject to the further limitation stated in subsection B, no annual increase in rates or responsibility requirements ordered by the Commission for any user of joint-use poles shall be greater than $ 8.00 per pole attachment per year ($ .67 per month). Any increase ordered by the Commission which is greater than $ 8.00 per pole attachment shall be phased in over the number of years which is necessary to limit the annual increase per pole attachment to $ 8.00 or less.

B. Special Per-Customer Rule for Low-Density Areas. In no event shall an annual increase in cost to an attaching entity exceed $ 12.00 ($ 1.00 per month) per customer of that attacher. Any increase ordered by the Commission which is greater than $ 12.00 per customer of the attacher shall be phased in over the number of years that is necessary to limit the annual per-customer increase to $ 12.00 or less. . REVENUE-NEUTRAL RATE ADJUSTMENTS FOR UTILITIES

If pole attachment rates for cable television systems ordered by the Commission under 35-A M.R.S.A. § 711 (or pursuant to an agreement between an electric or telephone utility and a cable television system which is consistent with the policies of this Rule) will result in a change in the overall revenues of an electric utility or a telephone utility change of 0.25 percent or more,